



IN THE MATTER OF THE APPLICATION OF
SALT RIVER PROJECT, OR THEIR ASSIGNEE (S),
IN CONFORMANCE WITH THE REQUIREMENTS
THE ARIZONA REVISED STATUTES 40-360.03 AND
40-360.06 FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AUTHORIZING THE CONSTRUCTION
OF NATURAL GAS-FIRED, COMBINED CYCLE
GENERATING FACILITIES AND ASSOCIATED
INTRAPLANT TRANSMISSION LINES, SWITCHYARD
IN GILBERT, ARIZONA LOCATED NEAR AND WEST OF
THE INTERSECTION OF VAL VISTA
DRIVE AND WARNER ROAD

CASE NO. 105
DOCKET NUMBER
L00000B-00-0105

2001 FEB 28 A 9:44

REQUEST FOR REVIEW BY THE
ARIZONA CORPORATION COMMISSION
OF THE POWER PLANT AND
LINE SITING COMMITTEE'S
FEBRUARY 14, 2001 DECISION AND
OBJECTION TO THE FORM AND
CONTENT OF SAID DECISION

ORAL ARGUMENT REQUESTED

REQUEST FOR REVIEW

Pursuant to A.R.S. 40-360.07 (A) and (B), Intervenor Mark Sequeira hereby gives notice and request's review of Power Plant and Line Siting Committee's Decision dated February 14, 2001 and Objection to Form and Content of the February 14, 2001 Decision.

I. INTRODUCTION – GROUNDS FOR REVIEW:

The Power Plant and Line Siting Committee (hereinafter called "The Committee") failed and refused to consider the paramount issue at stake in these proceedings by not properly applying A.R.S. 40-360.06. The Committee failed to consider each and every factor as a basis for its action with respect to the **suitability** of this plant as specifically set forth in A.R.S. 40-360.06 (A) 1-9, (B)(C) and (D).

II. FAILURE TO APPLY 'ENVIRONMENTAL COMPATIBILITY' RULE

The Committee heard testimony regarding the environmental impact the plant expansion would have upon the community yet selectively choose to ignore challenges to SRP's claim to jurisdiction while operating as a power (and not a water) company during this proceeding. The committee decided to accept claims made by the applicant rather than calling in expert legal testimony in this area. The committee also decided to make their recommendation in opposition to the Town of Gilbert's own documents that prescribe and limit growth to fit a general plan and building/land usage codes that were created to protect a particular environment. This recommendation was also made with the understanding that the Mayor of Gilbert had requested that the committee decide on the issue of compatibility with the Town of Gilbert since SRP was claiming legal jurisdiction and independence of the Town's ordinances. As outlined below, the impact upon the community had not been considered in respect to the applicant receiving a recommendation to the ACC for approval of the addition of three new power plants at the existing facility.

Arizona Corporation Commission
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a) CHALLENGE TO SRP'S CLAIM TO JURISDICTION

The Applicant continually skirted the issue of jurisdiction even though there were multiple challenges made and considerable doubt raised as to the legal question of SRP's jurisdiction operating as a power company and not as a water company. This is of considerable importance as the Mayor and others have claimed that APS or any other utility would not be allowed such an expansion as that proposed in SRP's CEC application due to numerous violations of Town code. Any other utility or business would have to go through the regular Town of Gilbert process including the Town of Gilbert's Design and Review Board. SRP in this case claimed to be exempt and yet has never proven that they have the legal right to do so. It is this intervenors understanding that the ACC exists in this case to assure other utilities that SRP is not being allowed to have undue advantage in a deregulated marketplace unless such protection is indeed granted them by the State of Arizona.

The intervenors stressed that the Committee should hire or consult with their own legal experts as well as SRP's counsel to prove that they indeed have the legal right to claim municipality status in relation to the Town of Gilbert.

b) THE TOWN OF GILBERT'S LACK OF INVOLVEMENT

The lack of involvement by the Town of Gilbert leaves a gap in the record. The Committee repeatedly stressed that this was making it difficult for the Committee to do it's job. However the Committee did have the documents that the Town uses when considering whether a project is compatible with the Town and should be granted permission to build at a given site. These documents were ignored. In a case that is unique in the nation as to the size and proximity to residences this should have been given more weight than any other aspect of environmental compatibility. This is especially the case when a Town feels that they cannot enforce their own laws and has requested the ACC to judge whether compliance and compatibility has been satisfied.

Please consider that the Mayor never appeared except at the end of testimony and that with the understanding that she was going to be served. The Mayor did not speak under oath nor was she cross-examined. She also did not address the issue of compatibility with Town ordinances. The Committee did not deem fit to ask the Mayor questions pertaining to compatibility with the surrounding area or Gilbert. The Mayor has stated that APS would be denied as would any other utility proposing a similar expansion due to lack of compatibility. It is this intervenor's understanding that the only difference is SRP's name on the application. That if a physical power plant is incompatible than that plant is incompatible regardless of the company proposing the expansion. The only two members of the Town to be significantly involved with SRP in this process was Assistant Town Manager George Petit and Town Councilwoman Maggie Cathey. Neither testified under oath or was cross-examined. Councilwoman Maggie Cathey never appeared to clarify the Town's position and the Assistant Town Manager was instructed by the town's attorneys to solely address the IGA and was granted no authority to speak to any other issue.


c) FAILURE TO PROVE COMPATIBILITY WITH PRIOR EXISTING

SRP failed to prove compatibility with existing development or Town's legal documents. As testified to by intervenor Mark Sequeira and witness Town Councilman Mike Evans, and Sequeira exhibit #23 - Ordinance no. 1299 (ammended land use development code), Sequeira exhibit # 30 - Zones (District Classifications) of the Gilbert Unified Land Development Code, Sequeira exhibit # 3 - Gilbert General Plan Land Use Element and the Town of Gilbert Building Code. I request that you revisit this testimony and related exhibits regarding zoning, building restrictions, Gilbert's stated purpose in creating a general plan and zoning ordinances.

Nowhere in SRP's application or testimony did they address fundamental violations of Town of Gilbert standards. While SRP MAY have legal jurisdiction (which they have still not proven) they still must be compatible with their surroundings which is this case is a town (and a residential community) rather than plants and wildlife. In a normal case of this nature an applicant would be required to come into compliance with existing code and zoning laws prior to approval. SRP failed to prove that they could adequately mitigate the plant so that "permitted uses shall not cause to be exhausted or emitted into the air beyond the industrial district wherein such use is located, smoke, soot, dust, fumes or other gases, vibration. No uses shall endanger surrounding neighborhoods through the risk of explosion or radiation." (Gilbert Unified Land Development Code, Ch.1, Pg 38 (c.6 - which actually concerns I-b or industrial buffer zoning)

The current zoning on this property is still AG (agricultural) which does not permit industrial usage. It was due to the Town's, and SRP's, lack of rezoning that led to other agricultural land bordering the plant being rezoned residential (The ONLY changed usage allowed for AG zoned land) without any buffer or transition zone. You have written testimony by former Town Councilman Phil Long who stated that he attended all the relevant hearings during the time land surrounding the plant was rezoned residential and SRP did not object to that usage. Further the only testimony from the Town Council on the issue of compatibility was that given by Councilman Mike Evans. While Mr. Evans spoke as a private citizen and not at the behest of the Town of Gilbert, he is to be considered an expert witness in relation to the Town's guiding documents. His testimony that the plant was not in compliance and could not be compatible as proposed was ignored by the Committee.

Respectfully submitted this 27th day of February, 2001.


Mark Sequeira,
Citizens Opposed To SanTan

Original and copies filed with the
Arizona Corporation Commission
this 27th day of February, 2001 with copies to:

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